STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

LINDITA PIRGU, Guardian and Conservator of the Estate of Feridon Pirgu, a Legally Incapacitated Individual, Plaintiff-Appellant,

Supreme Court No. **150834**

v.

Court of Appeals No. 314523

UNITED SERVICES AUTOMOBILE ASSOCIATION, parent company of USAA INSURANCE AGENCY, INC., doing business In the State of Michigan as a foreign profit corporation; and in the State of Texas as a domestic for-profit corporation,

Defendant-Appellee.

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PLAINTIFF-APPELLANT'S SUPPLEMENTAL BRIEF
IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

TABLE OF CONTENTS

Contents

INDEX OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

STATEMENT OF QUESTIONS PRESENTED
IN SUPPPLEMENTAL BRIEF

ISSUE I

Are Reasonable Fees under MCL 500.3148(1) Governed by *Smith v Khouri*?

Plaintiff-Appellant answers "Yes."

Defendant-Appellee answers "No."

The Court of Appeals answered "No."

The trial court answered "No."

ISSUE II

Did the Trial Court Abuse its Discretion in Calculating the Attorney Fees Due the Plaintiff?

Plaintiff-Appellant answers "Yes."

Defendant-Appellee answers "No."

The Court of Appeals answered "No."

The trial court answered "No."

STATEMENT OF FACTS FOR SUPPLEMENTAL BRIEF

Plaintiff-Appellant (Plaintiff), pursuant to this Court's order, refrains from presenting facts already set forth in her Application for Leave to Appeal, although certain facts may be emphasized.

With regard to Issue I – whether no-fault attorney fees are governed by *Smith v Khouri* or *Wood v DAIIE*[1] – the specific facts of this case are mere background.

With regard to Issue II – whether the trial court abused its discretion – Plaintiff's Application for Leave presented (in the body of the application) the complete transcript of the trial court's deliberations on the amount of the attorney fee follows.[2] Citing Motion Hearing, 12/19/2012, pp. 11-14. In Plaintiff's statement of the issue, Plaintiff stated, "The trial court engaged in no genuine review of the hours expended and no genuine review of the applicable hourly rate. Instead, the trial court awarded an attorney fee that was one-third of the jury award." Plaintiff's position is unchanged, but all pertinent facts are set forth in the

[1] *Smith v Khouri*, 481 Mich. 519, 751 N.W.2d 472 (2008); *Wood v DAIIE*, 413 Mich. 573, 321 N.W. 2d 653 (1982).

[2] Defendant-Appellee presented discussion on this subject that occurred at the motion to enter judgment.

Application, and Plaintiff refrains from "mere restatement" of facts within the application papers.

However, Plaintiff emphasizes the trial court's rebuke to Plaintiff's trial attorney who maintained that the trial court should award an attorney fee predicated on the number of hours multiplied by an hourly rate (hereafter, the "time-rate" method). The trial court terminated discussion with the caution, "Do you want me to give you less than that [a fee based on contingency-fee considerations]?" With all due respect to the trial court, this response cut short substantive deliberations regarding the criteria for an attorney fee award – the antithesis of an exercise of discretion.

Plaintiff also relies upon the Court of Appeals dissenting opinion (J. Gleicher). J. Gleicher explained that regardless of whether *Smith* or *Wood* governs, "the trial court abused its discretion by neglecting to consider the number of hours Shulman invested in the case and his appropriate hourly rate. (Dissenting opinion, p. 4.)

LAW AND ARGUMENT ON SUPPLEMENTAL BRIEF

ISSUE I

Reasonable Fees under MCL 500.3148(1) Are Governed by *Smith v Khouri*.

Under the No-Fault Act, attorney fees "shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment." MCL 500.3148(1). The hurdle imposed upon the claimant is worthy of note.

The plaintiff must first prevail at trial, demonstrating that the defendant failed to pay no-fault benefits owed to the plaintiff. Additionally, the plaintiff must demonstrate that the defendant unreasonably delayed in making proper payment.

In contrast, MCR 2.403(O) grants an award of attorney fees against the rejecting party unless the verdict is mathematically more favorable to the rejecting party than the case evaluation. For example, the plaintiff is awarded an attorney fee against a rejecting defendant if the verdict exceeds 90% of the case evaluation

award.[3] MCR 2.403(O)(3). The award is mechanical and not subject to the criterion that the rejecting party (liable for attorney fees) acted unreasonably.

However, the goals of MCL 500.3148(1) and MCR 2.403 are similar. As to MCR 2.403, awarding attorney fees against the rejecting party, this Court wrote, *Smith v Khouri*, 481 Mich. 519, 526-527, 751 N.W.2d 472 (2008):

> Consistently with the American rule, this Court has specifically authorized case-evaluation sanctions through court rule, allowing the awarding of reasonable attorney fees to promote early settlements.

The attorney fee provision within the no-fault act is also designed to encourage prompt settlement of claims that must not be unreasonably denied. In *Tinnin v Farmers Insurance Exchange*, 287 Mich.App. 511, 515, 791 N.W.2d 747 (2010), the court opined:

> The no-fault act, MCL 500.3101 *et seq.*, was intended to provide insured persons who have sustained injuries in automobile accidents with assured, adequate, and prompt compensation for certain economic losses. *Shavers v. Attorney General,* 402 Mich. 554, 578–579, 267 N.W.2d 72 (1978). To ensure prompt payments to the insured, the act includes a provision for attorney fees. *McKelvie v. Auto Club Ins. Ass'n,* 203 Mich.App. 331, 335, 512 N.W.2d 74 (1994).

Here, J. Gleicher, dissenting, elaborated on the purpose of the attorney fee rule.

> In decreeing no-fault insurance compulsory for all motorists, the Legislature contemporaneously undertook to highly regulate Michigan's no-fault insurance business. In *Shavers v Attorney General*,

[3] The mathematical determination changes if the claimant also rejected the award, and the award must be unanimous. MCR 2.403(O)(3); MCR 2.403(O)(7).

402 Mich 554; 267 NW2d 72 (1978), our Supreme Court upheld the constitutionality of the no-fault act's complex regulatory scheme, finding its enactment justifiable as an effort to remedy the "operational deficiencies of the tort system." *Id*. at 621. One such tort system shortcoming involved the "[l]engthy delays ... in compensating those injured in automobile accidents—often in cases where the need for prompt compensation was strongest." *Id*. at 621-622. "The goal of the no-fault insurance system was to provide victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses." *Id*. at 578-579.

Accordingly, the statutory requirement that an insurer promptly pay benefits due holds a central place among the act's regulations. Accident victims are entitled to payment of certain personal injury protection benefits as soon as "the loss accrues." MCL 500.3142(1). Once an expense is incurred, benefits must be paid "within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained." MCL 500.3142(2). Commanding punctual payment of compensation for economic losses, the *Shavers* Court explained, "may remedy the delays under the tort system" as well as the tort system's failure to fairly compensate all "personal injury victims of motor vehicle accidents[.]" *Shavers*, 402 Mich at 622.

The Legislature gave bite to the 30-day pay regulation by reinforcing it with two provisions. * * *

The second protection, the no-fault act's attorney-fee provision, serves precisely the same goal. *Darnell v Auto-Owners Ins Co*, 142 Mich App 1, 14-15; 369 NW2d 243 (1985). An insurer that unreasonably refuses to pay benefits is not only on the hook for 12% interest, but also bears responsibility for paying the fees of the vindicated claimant's attorney. A claimant's attorney fees "shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment." MCL 500.3148(1).

> The purpose of the no-fault act's attorney-fee penalty provision is to ensure prompt payment to the insured. Accordingly, an insurer's refusal or delay places a burden on the insurer to justify its refusal or delay. The insurer can meet this burden by showing that the refusal or delay is the product of a legitimate question of statutory construction, constitutional law, or factual uncertainty.

> [*Ross v Auto Club Group*, 481 Mich 1, 11; 748 NW2d 552 (2008) (citations omitted).]
>
> Thus, the no-fault act protects claimants from bearing their own legal fees when challenging a recalcitrant insurer. Indisputably, the attorney-fee and interest provisions serve also to deter "unreasonable payment delays and denials of no-fault benefits that force the commencement of legal action[.]" *Lakeland Neurocare Ctrs v State Farm Mut Auto Ins Co*, 250 Mich App 35, 43; 645 NW2d 59 (2002). By including these provisions in the no-fault act, the Legislature deemed it proper to punish as well as to deter:
>
> > Permitting the imposition of these penalty provisions by health care providers provides a legitimate and enforceable incentive to no-fault insurers to perform their payment obligations, imposed by operation of law, in a reasonable and prompt manner. [*Id*. at 44].
>
> And because the no-fault act is remedial in nature, its provisions must be liberally construed in favor of the intended beneficiaries. *Frierson v West American Ins Co*, 261 Mich App 732, 734; 683 NW2d 695 (2004).

Bearing in mind the goal of prompt payment of no-fault claims, particularly where the failure to make payment is unreasonable, it is clear that a reasonable attorney fee cannot be routinely limited to a contingent fee. Whenever the insurance carrier denies a minimum claim, the insured will be unable to find representation. Consider a small claim, *e.g*. $8,000 in unpaid medical bills. The insured may find no attorney willing to prosecute a suit – even where payment was unreasonably denied – knowing that the court-awarded fee will be one-third of the small amount (also, the small amount is reduced by expenditures). Manifestly, the insurance carriers will deduce that there is no incentive to promptly pay no-fault benefits.

Two opinions from this Court regarding attorney fees are routinely cited: *Wood v DAIIE*, 413 Mich. 573, 588, 321 N.W.2d 653 (1982), and *Smith v Khouri*, 481 Mich. 519, 751 N.W.2d 472 (2008). In *Wood*, this Court addressed attorney fees under the No-Fault Act. In *Smith*, the attorney fees arose as case evaluation sanctions under MCR 2.403(O). In *Smith*, this Court held that the trial court "should begin the process of calculating a reasonable attorney fee by determining factor 3 under MRPC 1.5(a), *i.e.*, the reasonable hourly or daily rate customarily charged in the locality for similar legal services, using reliable surveys or other credible evidence." *Id.*, 522. Then, "this number should be multiplied by the reasonable number of hours expended." *Id.* This Court concluded, "This will lead to a more objective analysis."

Smith was entirely general in its approach. Nothing within the opinion suggests that the time-rate approach was restricted to the immediate context. *Augustine v Allstate Insurance Co.* 292 Mich.App. 408, 429, 807 N.W. 2d 77 (2011), held that "the trial court should have applied *Smith*, because the framework outlined in *Smith* is the proper standard to be applied in cases brought pursuant to MCL 500.3148(1) when a party seeks hourly attorney fees."[4] J. Gleicher, below, also opined that *Smith* controls no-fault litigation, "see[ing] no meaningful

[4] Plaintiff acknowledges that the majority opinion below considered Augustine's statement *dicta*. *Pirgu v United Automobile Association*, Majority Opinion, 4.

difference between assessing attorney fees as case evaluation sanctions, and assessing them as sanctions for unreasonably denied or delayed payment of PIP benefits." (Dissenting opinion, *supra*, p. 6.)

Wood v DAIIE, *supra*, explicitly analyzed no-fault attorney fee awards. Later, *Smith* (in the context of case-evaluation sanctions) elaborated upon the *Wood* analysis. In *Smith*, 481 Mich. 522, this Court expressed the theme of its opinion.

> In this case, we review a trial court's award of "reasonable" attorney fees as part of case-evaluation sanctions under MCR 2.403(O) calculated under some of the factors we listed in *Wood v. Detroit Automobile Inter–Ins. Exch.*, 413 Mich. 573, 321 N.W.2d 653 (1982), and Rule 1.5(a) of the Michigan Rules of Professional Conduct. We take this opportunity to clarify that the trial court should begin the process of calculating a reasonable attorney fee by determining factor 3 under MRPC 1.5(a), i.e., the reasonable hourly or daily rate customarily charged in the locality for similar legal services, using reliable surveys or other credible evidence. This number should be multiplied by the reasonable number of hours expended. This will lead to a more objective analysis. After this, the court may consider making adjustments up or down in light of the other factors listed in *Wood* and MRPC 1.5(a). In order to aid appellate review, the court should briefly indicate its view of each of the factors.

This Court remanded to the trial court, because it had failed to determine the reasonable hourly (daily) rate. *Id.*

Plaintiff maintains two propositions. First, *Wood* is incomprehensible without consideration of the reasonable hourly (daily) rate and the number of hours (reasonably) expended. Second, it defies imagination that *Smith* explicitly

clarified or refined the analysis set forth in *Wood* with the expectation that the bench and bar would decline to apply *Smith* to no-fault litigation.

In *Wood*, this Court set forth multiple criteria for determining an attorney fee award arising from no-fault litigation, upon the understanding that "the compelling criterion is that the attorney fee be 'reasonable.'" *Id.*, 588. This Court adopted and recited "the guidelines from *Crawley v. Schick*, 48 Mich.App. 7248, 737, 211 N.W.2d 217 (1973)." *Id.* The lead criteria undoubtedly propose the very criteria set forth in *Smith*.

The first criterion is "the professional standing and experience of the attorney." For this to mean anything operational, it means that the trial court must review the professional standing and experience of the attorney <u>for the purpose</u> of determining the appropriate hourly (daily) fee. Otherwise, the criterion means nothing in the context of the decision. Surely this Court was not proposing that the trial court determine that (i) the lawyer is very professional and very experienced and then – boom! – conclude that the attorney fee for the case is $50,000, or $100,000, or so forth, with no linkage. Surely not. Undoubtedly, determining the professional standing and experience of the attorney is a means to establish the rate at which the attorney will be paid.

The second criterion is "the skill, time and labor involved." As to "skill," this may be redundant, since the first criterion is "professional standing and

experience."[5] Regardless of redundancy, the above discussion applies. The "skill" of the attorney is relevant only in determining the hourly (daily) rate suitable for that attorney. Again, a finding of the level of the skill without connecting it to the hourly rate suitable for the attorney has no meaning. In a casual conversation, the statement that an attorney is very skillful (woefully unskilled) may have some meaning with no tie to the hourly rate. But in the context of this Court's consideration of the correct attorney fee, this criterion cannot logically be disconnected. Again, surely, it relates to the hourly rate to be employed.

The "time and labor" criteria may be but are not necessarily redundant. Time is obvious; the *Wood* decision anticipated *Smith*. As to "labor," the word may be qualitative (similar to "expertise"). In one instance, the "labor" may involve routine hour trials on whether the defendant used the credit card and should pay Visa for the purchases made. This "labor" may be qualitatively routine and without challenge, compared to argument before the United States Supreme Court or a trial involving complex patent law and intricate engineering facts. Again, the "labor" criterion does not exist in a vacuum. Where very few attorneys are capable of the "labor" demanded by the litigation, the hourly rate may be high. Reasonably, "labor" relates to the hourly rate. And, to repeat, "time" relates to time.

[5] The words are not necessarily redundant but there is considerable overlap.

Accordingly, even if *Smith* never issued, *Wood* necessarily implies that the trial court must use a time-rate analysis. The analysis may be implicit or disguised, but any degree of rationality demands the analysis. And the appellate courts are entirely justified in demanding that the trial court make explicit its reasoning.

Smith is clear. This Court noted that the controversy regarding reasonable attorney fees arose in the context of case-evaluation sanctions under MCR 2.403. This Court immediately noted that the fee was "calculated under some of the factors we listed in *Wood* * * *." *Smith*, 522. This Court noted that a reasonable attorney fee is governed by MCR 2.403(O)(6) that refers to a reasonable hour or daily rate, but this Court's painstaking analysis applied generally.

This Court did not commence its analysis by reference to the court rule. Rather, this Court initiated its discussion by citing *Wood*, *supra*, a decision directed toward no-fault attorney fees. This Court's goal is not inscrutability. To the contrary, this Court provides guidance to the Michigan bench and bar. A fair reading of *Smith* demonstrates that the result applies to all awards of reasonable attorney fees.[6]

This Court explained the rationale for awarding reasonable fees against the party who rejects case evaluation. *Smith*, 527-528.

[6] However, where specific legislation regarding the attorney fee modifies the analysis, it will trump expansive decisional authority.

> The purpose of this fee-shifting provision is to encourage the parties to seriously consider the evaluation and provide financial penalties to the party that, as it develops, "should" have accepted but did not. This encouragement of settlements is traditional in our jurisprudence, as it deters protracted litigation with all its costs and also shifts the financial burden of trial onto the party who imprudently rejected the case evaluation.

Beyond doubt, this Court was aware of the rationale for awarding no-fault attorney fees. (See *Tinnin* and J. Gleicher's, dissenting opinion, discussed *supra*.)

Thus, this Court, in *Smith*: (i) issued an opinion that elaborated upon *Wood*, a no-fault decision, (ii) made numerous references to a "reasonable" attorney fee, using the same language as that employed in *Wood* in its discussion of a no-fault attorney fee award, and (iii) nowhere proposed that the decision was restricted to an award arising from case evaluation. Rather, this Court explained that "our current multi-factor approach needs some fine-tuning" where the current approach was predicated upon a no-fault attorney fee award. Moreover, this Court scrupulously related its decision to past authority. It wrote, *id.*, 530-531:

> We hold that a trial court should begin its analysis by determining the fee customarily charged in the locality for similar legal services, i.e., factor 3 under MRPC 1.5(a). In determining this number, the court should use reliable surveys or other credible evidence of the legal market. This number should be multiplied by the reasonable number of hours expended in the case (factor 1 under MRPC 1.5[a] and factor 2 under *Wood*). The number produced by this calculation should serve as the starting point for calculating a reasonable attorney fee. We believe that having the trial court consider these two factors first will lead to greater consistency in awards. Thereafter, the court should consider the remaining *Wood*/MRPC factors to determine whether an

> up or down adjustment is appropriate. And, in order to aid appellate review, a trial court should briefly discuss its view of the remaining factors.

Importantly, this Court did not say: And all of the foregoing does not apply to other "reasonable" attorney fee awards. Yet to convey to the bench and bar that *Smith* is so restricted, such an explicit warning was undoubtedly required. It follows: *Smith* does govern no-fault attorney awards.

It remains to discuss *University Rehabilitation Alliance, Inc. v Farm Bureau Insurance Company of Michigan*, 279 Mich.App. 691, 760 N.W.2d 574 (2008). There, the attorney fee claimant embraced a contingent fee analysis rather than the time-rate methodology. In *University Rehabilitation*, the attorney fee claimant would have been sufficiently compensated by a time-rate fee.[7] In the class of cases where the plaintiff seeks more than the amount deemed sufficient under the time-rate approach, the fee is surely sufficient to motivate attorneys to litigate that class of cases. Either the attorney fee is sufficient under the *Smith* criteria or the fee is more than sufficient. The legislative goal of assuring lawyer representation in this class of cases is satisfied. Importantly, the hourly rate should reasonably reflect the possibility that the attorney will earn zero if the plaintiff does not prevail; if not

[7] This statement is arguably tautological. A fee that complies with *Smith* is, as a matter of law, sufficient. Empirically, the fee will be sufficient if it is genuinely reasonable, taking into account that a lawyer retained under a contingent fee contract confronts the possibility of achieving zero compensation. This factor should significantly affect the hourly rate.

the legislative goal will not be met. Choosing a rate that is paid with certainty confuses apples with oranges.)

Augustine, supra, was "not unmindful" of *University Rehabilitation*. It opined that *University Rehabilitation* was "distinguishable on its facts," because that attorney "sought to recover an attorney-fee award pursuant to that [contingency fee] agreement." *Id.*, n. 2 at 429. And *University Rehabilitation* gave a nod to the time-rate analysis, noting that the trial court "weighed the potential for extensive litigation at an hourly rate as a reasonable reason for plaintiff to retain counsel on a contingent fee basis." *Id.*, 701. But most importantly, *University Rehabilitation* erred by failing to give full consideration to *Smith*, upon the erroneous notion that *Smith*'s scope was limited to an attorney fee pursuant to MCR 2.403(O). *University Rehabilitation*, 279 Mich.App. 700. Although not immediately germane to this appeal, additional consideration must be given to the case where the attorney fee claimant argues for a contingent fee that exceeds the fee generated by the *Smith* time-rate methodology.

ISSUE II

The Trial Court Abused its Discretion in Calculating the Attorney Fees Due the Plaintiff.

Plaintiff finds it difficult to address this issue while refraining from repeating the material in her application for leave to appeal. Some repetition is inevitable.

Plaintiff submitted detailed billing records demonstrating the hours expended in the litigation.[8] Plaintiff's attorney proposed an hourly rate of $350.

Defendant responded.[9] Defendant asserted that no attorney fee should be awarded because the denial of no-fault benefits was not unreasonable. (Defendant's trial court brief, p. 15) (No cross-appeal was filed on that issue.) Additionally, Defendant asserted that the fees were excessive or unsupported. *Id.*, p. 21. Pertinent to this appeal, Defendant extensively discussed *Smith v Khouri*, *supra*, and *Augustine v Allstate Ins.*, 292 Mich.App. 408, 806 N.W.2d 77 (2011). Defendant explained to the circuit court that *Augustine* placed great emphasis

[8] Plaintiff's Nov. 27 Motion, *supra* (to which Plaintiff attached Ex 3, comprising (1) Affidavit of Richard Shulman, attesting, "The time involved in handling the litigation aspect of this case alone exceeded 615.50 hours that I billed as set forth in the attached billing statement," and 11 pages of a spreadsheet describing the time expended on this cause of action.)

[9] Defendant's Response to Plaintiff's Motion for Entry of Judgment, Motion for Judgment notwithstanding the Verdict, Motion to Strike Jury Question Relating to Future Benefits, Motion for Costs, Attorney Fees and Interest, dated December 11, 2012.

upon the Michigan Bar Journal data regarding attorney fees. Additionally, Defendant attached its Ex. E, State Bar Economics Survey.[10]

And yet the trial court gave no consideration to the hours expended and no consideration to the appropriate hourly rate.

But even if the trial court properly eschewed the *Smith* time-rate analysis, it presented no basis for its result. In *University Rehabilitation*, 279 Mich.App. 701, "[T]he trial court employed the multifactor analysis required by *Wood* and *Liddell* in ultimately concluding that the contingent-fee agreement between plaintiff and its attorneys established 'a reasonable attorney fee' under MCL 500.3148(1)." Here, the trial court engaged in no analysis at all. The lower appellate court was unable to meaningfully review the record to establish that the trial court engaged in reason and discretion to arrive at its decision. Assuming *arguendo* that *Smith* does not govern, the trial court was required to comply with *Wood, supra*, but it did not.

This Court held that the trial court should consider specific guidelines, although it is not limited to the enumerated factors. *Wood*, 413 Mich. 588. Here, the record is silent[11] regarding

> "(1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the

[10] 2010 Economics of Law Practice: Attorney Income and Bill Rate Summary Report (Jan 2011).
[11] Plaintiff respectfully submits that the record is meaningfully silent on the factors, notwithstanding the cavalier remarks by the court.

> results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client." [*Wood, id.*, citing *Crawley v. Schick*, 48 Mich.App. 728, 737, 211 N.W.2d 217 (1973).]

It can hardly be said that the trial court exercised discretion.

"An abuse of discretion standard * * * is more deferential than review de novo, but less deferential than the standard set forth in *Spalding v. Spalding,* 355 Mich. 382, 94 N.W.2d 810 (1959)." *Maldonado v Ford Motor Co.*, 476 Mich. 372, 388, 719 N.W.2d 809 (2006). "[A]n abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome." *Maldonado*, *id.*, citing *People v Babcock,* 469 Mich. 247, 269, 666 N.W.2d 231 (2003).

In *Babcock*, this Court fully reviewed the abuse of discretion standard of review. Fairly reading *Babcock* in its entirety, the appellate court must review the trial court's reasoning – the manner in which it reached the outcome. As a counter-example, if the trial court were to literally roll the dice to reach an outcome, this is an abuse of discretion. It matters not that the dice came up "7" and led to a result that might have been achieved by a rational and judicious trial court. The trial court has abdicated its responsibility to exercise discretion. Process counts, not merely the outcome. Here, the trial court's decision is characterized by whimsy,

not the exercise of discretion. The trial court abused its discretion, and this matter should be remanded for consideration on its merits.

RELIEF REQUESTED

WHEREFORE, Plaintiff-Appellant LINDITA PIRGU, Guardian and Conservator of the Estate of Feridon Pirgu, a Legally Incapacitated Individual, by and through her attorneys, Law Office of Richard M. Shulman and Richard E. Shaw, respectfully prays that this Court grant her Application for Leave to Appeal and pursuant thereto reverse the Court of Appeals majority Opinion and the trial court's Judgment regarding attorney fees, and remand to the trial court for determination of proper no-fault attorney fees.

Respectfully submitted,

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